

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

UNPUBLISHED
May 30, 1997

Plaintiff-Appellee,

v

No. 189707
Oakland Circuit Court
LC No. 93-460328-CC

NOVEL SAFOU, a/k/a
NOUEL SAFOU and MARTHA SAFOU,

Defendants-Appellees,

and

NATALIE, INC., d/b/a STOP and SHOP,

Defendant-Appellant.

Before: MacKenzie, P.J., and Holbrook, Jr., and T. P. Pickard*, JJ.

PER CURIAM.

This case involves the condemnation of a convenience store owed by defendants Safou and leased to defendant Natalie. Following a trial, the jury set the total value of the real estate at \$205,000 and, in an advisory opinion, allocated \$155,000 to the Safous as feeholders and \$50,000 to Natalie as leaseholder. Natalie appeals as of right from the trial court's judgment reflecting these values. Natalie also appeals as of right from the jury's verdict awarding it \$0.00 for alleged going-concern damages. We affirm in part, vacate in part, and remand.

Natalie first argues that the trial court improperly valued its leasehold at \$50,000. Natalie claims that, because the only evidence presented at trial valued the leasehold at \$108,000, the jury should have valued the interest at least at this amount. We agree that the \$50,000 valuation was not supported by the evidence.

* Circuit judge, sitting on the Court of Appeals by assignment.

It is well settled that a tenant for years is the owner of an estate and is entitled to just compensation in an eminent domain proceeding. See *In re Widening of Michigan Avenue*, 280 Mich 539, 549; 273 NW 798 (1937). The measure of the leaseholder's interest includes consideration of the uses to which the property is adapted, as well as all circumstances affecting the property's value. *Id.* at 549-550. In strict terms, the tenant's recovery is restricted to the value of the unexpired term of the lease, less the rental reserve. *Id.* at 549. While it is true that, in a condemnation case, a jury is not bound by testimony alone in determining just compensation, see *In re Grand Haven Highway*, 357 Mich 21, 30; 97 NW2d 748 (1959), the ultimate award should be within the range of the valuation testimony presented at trial. *Detroit v Michael's Prescriptions*, 143 Mich App 808, 811; 373 NW2d 219 (1985).

Here, the testimony presented at trial regarding the valuation of Natalie's leasehold interest ranged from \$97,500 to \$108,000. Testimony regarding the valuation of the Safous' feehold interest ranged from \$47,000 to \$221,600. Therefore, while the jury's valuation of the Safous' fee was within the range of testimony presented, the valuation of Natalie's leasehold was not. Accordingly, we affirm the trial court's judgment to the extent that it valued the Safous' feehold interest at \$155,000. We vacate those portions of the judgment setting the value of the leasehold and, consequently, the overall value of the real estate, and remand for a new trial.

Natalie next argues that the trial judge abused his discretion in denying its motions for JNOV and new trial on the basis that the verdict was against the great weight of the evidence regarding the jury's verdict of \$0.00 to Natalie for alleged going-concern damages. We disagree.

Because the valuation testimony as to Natalie's alleged going concern ranged from \$0.00 to \$169,000, and because Natalie agreed to submit this range to the jury, we conclude that the trial court properly denied Natalie's motion for JNOV and did not abuse its discretion in denying Natalie's motion for a new trial. See *Michael's Prescriptions, supra* at 811, 823; *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995).

Affirmed in part, vacated in part, and remanded for new trial on the value of Natalie's leasehold. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard